

Chapter VIII

Organization of the Legislature

The New Member

During an election campaign, the attentions of the candidate are primarily focused on garnering enough votes to win the election. When the excitement of election night has passed, the Member-elect begins a new journey, one which culminates in membership in the California Legislature.

After the election, the Secretary of State compares and estimates the votes cast and then delivers to the successful candidates a certificate of election which serves as *prima facie* evidence of the candidates' right to membership in the Legislature.¹

As a first step to realization of this right, the new legislator appears in the Assembly Chamber, if he or she is an Assembly Member-elect, or in the Senate Chamber, if he or she is a Senator-elect, at 12 o'clock noon on the opening day of the session.² At that time the Chief Clerk of the last regular session calls the Assembly to order,³ while the Lieutenant Governor performs the similar duty in the Senate.⁴ A prayer is offered in each house by the respective Chaplain of the last regular session, after which the Reading Clerk (in the Assembly) and the Assistant Secretary (in the Senate) reads the certificate of duly elected members as certified by the office of the Secretary of State.

In the Assembly, the Reading Clerk then calls the roll of counties in alphabetical order. As the counties are called, the member-elect representing such county or counties takes the oath of office prescribed by the Constitution,⁵ which is administered by a justice or judge of the California courts, or other appropriate official.⁶ The procedure in the Senate is similar to that of the Assembly with the exception that only the newly elected half of the membership of the Senate takes office on the opening day of the general session, and the roll is called by district instead of by county.⁷ Oaths of office in the Senate are also administered by a justice or judge of the California courts, or other appropriate official. The oath taken by each Member of the Legislature is reprinted in the journals of the respective houses.⁸

The Constitution provides that Members of the Legislature, before they enter upon the duties of their offices, must take and subscribe to the

¹ *Elections Code*, Section 15504; *Government Code*, Section 9021.

² *Constitution*, Article IV, Section 3(a); *Government Code*, Section 9020.

³ *Government Code*, Section 9023. In case of the absence or inability of the Chief Clerk of the Assembly, the senior member-elect present shall take the chair. If there is more than one senior member-elect present and the senior members are unable to agree as to who shall call the session to order, the Attorney General or one of his deputies shall call the session to order.

⁴ *Government Code*, Section 9022. In case of the absence or inability of the President of the Senate, the senior member present shall take the chair.

⁵ *Constitution*, Article XX, Section 3; *Government Code*, Section 9023.

⁶ See for example, *Journal of the Assembly, 1983–84 Session*, December 6, 1982, p. 5 (Members sworn in by the Governor); *Journal of the Assembly, 1979–80 Session*, December 4, 1978, p. 5 (sworn in by Legislative Counsel).

⁷ *Government Code*, Section 9022.

⁸ *Government Code*, Section 9025.

constitutional oath of office.⁹ Members of the Legislature who do not take the oath of office on the opening day of the Legislature may take the oath at any time during the term for which they are elected.¹⁰

The President or President pro Tempore of the Senate may administer the oath of office to any Senator, and the Speaker or Speaker pro Tempore of the Assembly may administer the oath of office to any Assembly Member.¹¹ When this oath of office has been taken, the successful candidate has become a Member of the Legislature.

One of the first tasks confronting the new member, and it is an important one, is to meet and be met by other members. Nowhere is this activity more important than in the member's initial contact with his or her seatmate, whose company will be almost constant during floor sessions and upon whom the member will often rely for conversation and counsel.

Election of Assembly Officers

The first order of business after the new members have taken their oaths of office is the nomination and election of the officers of each house.¹² In the Assembly, a Speaker, a Chief Clerk, a Sergeant at Arms, and a Chaplain are nominated and elected by a majority vote of the duly elected and qualified members.¹³ The Minute Clerk of the Assembly is appointed by the Chief Clerk, subject to approval by the Assembly Rules Committee. Each officer, upon his or her election, takes the constitutional oath of office.¹⁴ The Speaker appoints a Speaker pro Tempore, and an Assistant Speaker pro Tempore whose duties are to preside over the sessions of the Assembly in the event of the absence of the Speaker;¹⁵ a Majority Floor Leader is appointed by the Speaker;¹⁶ and a Minority Floor Leader is selected by the minority caucus.¹⁷ The Speaker, Speaker pro Tempore, Assistant Speaker pro Tempore, and the Majority and Minority Floor Leaders are chosen from the membership of the House, but the other elected officers are not Members of the Legislature.

The Speaker of the Assembly retains all of his or her rights as a member, and votes upon all measures that come before the Assembly. He or she does not, however, have tie-breaking vote capabilities and if there is a tie vote in the Assembly, the measure under consideration is defeated.¹⁸

During the 1961 Regular Session, the Assembly adopted new procedures to fill vacancies occurring in the elected officer positions while the Assembly

⁹ *Constitution*, Article XX, Section 3. The second paragraph of the oath proscribing membership in organizations advocating overthrow of federal or state government was ruled unconstitutional (under the U.S. Constitution's freedom of speech protections) by the California Supreme Court in 1967. *Vogel v. Los Angeles County*, 68 Cal. 2d 18. This invalidation did not affect the first paragraph of the oath, however, which is still in use. *Smith v. County Engineer of San Diego County*, 266 Cal. App. 2d 645 (1968), and *Chilton v. Contra Costa Community College District*, 55 Cal. App. 3d 544 (1976).

¹⁰ *Constitution*, Article XX, Section 3; *Government Code*, Section 9024.

¹¹ *Government Code*, Section 9190.

¹² *Constitution*, Article IV, Section 7(a); *Government Code*, Sections 9022 and 9023.

¹³ *Government Code*, Sections 9171 and 9172. In effect this means that if all 80 Members of the Assembly have duly qualified (taken the oath of office), it would require 41 votes to elect a Speaker. However, the Legislative Counsel has indicated that if only 79 of the 80 members elected had taken the oath of office at the time the Speaker was to be elected, he or she could be elected by a 40 to 39 vote, as only 79 members would have been duly elected and qualified within the meaning of *Government Code* Section 9171. See *Journal of the Assembly*, 1925 Session, p. 4, where a Speaker was elected by a vote of 40 to 39. This same *Journal* (p. 1) indicates that 80 Members of the Assembly were elected, but only 79 had taken the oath of office prior to the election of the Speaker (p. 3).

¹⁴ *Constitution*, Article XX, Section 3. See also, footnote 9, *supra*.

¹⁵ *Assembly Rules* 1, 3, 28 and 29.

¹⁶ *Government Code*, Sections 9171 and 9172; *Assembly Rules* 1 and 28.

¹⁷ *Government Code*, Sections 9171 and 9172; *Assembly Rule* 28.

¹⁸ *Assembly Rule* 107.

was not in session. One new procedure provided for the calling of a caucus to select a Speaker in the event of a vacancy in that office after *sine die* adjournment of the session. The requirement that a majority of the elected membership of the Assembly is necessary to select a Speaker was retained. The procedure at the caucus is the same as the procedure required for the election of a Speaker at the opening of a regular session.

The Legislative Counsel rendered his opinion that the Chief Clerk of the Assembly should preside over the caucus until the election of a Speaker.

When a vacancy occurred in the office of Speaker in 1961, a caucus of the Members of the Assembly was convened by Chief Clerk Arthur Ohnimus on September 30, 1961, and the Honorable Jesse M. Unruh, was elected.¹⁹ This was the first and only time in the history of the Assembly that this procedure was followed. Assemblyman Unruh continued to serve as Speaker of the Assembly until 1969.

Another new procedure permitted the Rules Committee to fill any vacancy in any of the elected officer positions in the Assembly which occurred after adjournment of the session.²⁰

The present Assembly Rules contain the same provisions but now provide for the filling of vacancies during joint recesses rather than after final adjournment. With the present biennial sessions, the period between adjournment and the convening of the next Legislature is only a few days while a joint recess may exceed three months.

Chaplains

The constitutionality of opening legislative sessions with prayer has been upheld by the U.S. Supreme Court. In *Marsh v. Chambers* (1983), the Court held that legislative chaplaincies do not violate the Establishment Clause of the U.S. Constitution. The decision cited the fact that the U.S. Congress has had a chaplain since its first session. In his decision, Chief Justice Burger opined that, "It can hardly be thought that in the same week Members of the First Congress voted to appoint and to pay a chaplain for each House and also voted to approve the draft of the First Amendment for submission to the states, they intended the Establishment Clause of the Amendment to forbid what they had just declared acceptable." In California, the chaplains' prayers are nondenominational in nature, and guest chaplains from diverse faiths are invited to open sessions from time to time. For a listing of California's legislative chaplains, see Appendix E, p. 270.

1995–96 Organizational Session: An Assembly Stalemate

On December 5, 1994, the Assembly did not immediately organize and elect a Speaker due to an unprecedented set of circumstances. The simultaneous election of one person to both the Assembly and Senate, and the change in party registration of a Member-elect, led to a volatile political, parliamentary, and constitutional dilemma. In the ensuing events, the

¹⁹ On September 19, 1961, Speaker Ralph M. Brown resigned from the Assembly, and on September 30, 1961, Hon. Jesse M. Unruh was elected Speaker of the Assembly by the caucus. (See *Appendix to Journal of the Assembly*, 1961, p. 6210.)

²⁰ *Assembly Rule 34*.

Assembly disqualified a Member, recessed several times for lack of a quorum, did not elect a Speaker for over one month, and the voters recalled two Members. A record number of Speakers (four) were also elected from January 1995 to January 1996. A brief description of the events will provide the reader with an overview of important elements of that historic situation.

The Democratic party had held the majority (at least 41 seats) in the Assembly for 25 years, but appeared to lose their majority status in the 1994 election, by winning only 39 seats to the Republicans' 41. However, of the 41 registered Republicans that were officially elected at the November 1994 general election, one Republican's name had appeared as a candidate for both the Assembly and Senate, and was therefore elected to both offices.²¹ Assembly Member-elect/Senator-elect Richard Mountjoy indicated his intention to be sworn-in as an Assembly Member, participate in the election of Speaker, and then resign from the Assembly to take office as a Senator.

Democratic legislators argued that Mr. Mountjoy could not serve in both houses, and demanded that he take the oath of office for the Senate, thereby reducing the Republicans' Assembly membership to only 40 seats out of 80. Assembly Member-elect/Senator-elect Mountjoy argued that since he was duly elected and qualified to serve in each office, he could serve briefly in one House and subsequently serve in the other house, especially given the fact that there was no law prescribing any deadline for taking the oath of office once elected.²²

Mr. Mountjoy's importance in the Speakership vote intensified when Republican Member-elect Paul Horcher changed party affiliation from Republican to Independent just prior to the organizational session. The house's partisan breakdown thus became: 40 Republicans, 39 Democrats, and 1 newly registered Independent, Mr. Horcher. If Mr. Mountjoy were disqualified, and Mr. Horcher voted with the Democrats, then the Democrats would have a majority of the elected membership, and could therefore elect a Democratic Speaker.

To deny Mr. Mountjoy a seat in the Assembly, the house would have to disqualify Mr. Mountjoy by a majority vote, or expel him with a two-thirds vote. The Democrats pursued disqualification, based on Mr. Mountjoy's election to two incompatible offices.²³

On December 5, 1994, Chief Clerk E. Dotson Wilson presided over the opening day of session pursuant to Government Code Section 9023. Democrat Members-elect moved that Member-elect Mountjoy should not be

²¹ Normally, a candidate may not run for "incompatible offices." In this instance, a vacancy had occurred in the Senate after the Assembly candidate had already filed election papers to run for the Assembly in the general election. By coincidence (and by operation of law), the special election for the Senate vacancy and the general election for the Assembly seat were consolidated to occur on the same day. A new law took effect in 2006 that codified the common law in this area. Under *Government Code* Section 1099, no public officer (elected or appointed) may simultaneously hold two public offices that are incompatible.

²² According to case law and statutes cited by Legislative Counsel in an opinion issued on December 2, 1994 ("Legislators: Qualifications—#366) a member-elect must take the oath of office within a "reasonable time" after the election. However, neither the Senate nor the Assembly had rules that required members-elect to take the oath of office within a specified period of time after election. As a result, the Democrat-controlled Senate contemplated adopting a new rule to pressure Senator-elect Mountjoy to take the Senate oath, or risk forfeiture of his rights to serve as Senator.

²³ Election laws were vague enough on this issue so as to further fuel the debate. Since the Secretary of State's certificate of election clearly serves as *prima facie* evidence of the candidate's right to hold office, the fact that Mr. Mountjoy had received such certificates for both offices, as well as meeting the other requirements of election law (citizenship status, residency requirement, and age), it appeared as though he had a valid legal argument for serving in either house. However, there is clear case law that prohibits a citizen from serving in two incompatible offices (but not from actually being elected to two incompatible offices). The three crucial questions, in effect, became (1) should Mr. Mountjoy be allowed to take office in the Assembly?; (2) if he is seated, should he be allowed to vote on procedural motions leading up to a vote on his "duly elected and qualified" status?; and (3) is Mr. Mountjoy being "disqualified" (majority vote) or expelled (54 votes pursuant to the Constitution)?

sworn in or participate in the business of the Assembly until the body voted on his qualifications. However, the Governor had already sworn in Mr. Mountjoy as a Member of the Assembly moments prior to the convening of the organizational session. Moreover, pursuant to Government Code Section 9023, the Chief Clerk ruled all motions out of order prior to the swearing in of Members, since the body is not constituted until the oaths have been administered.

Further attempts to deny Mr. Mountjoy a seat in the Assembly were ruled out of order based on the Government Code's language that "there shall be no other business, motion, or resolution considered before the election of Speaker, save and except a motion to adjourn or a motion for a call of the house."²⁴ Hours of parliamentary maneuvers followed, and finally the roll was opened for election of a Speaker, with Mr. Mountjoy being allowed to vote. A tie vote (40 votes for Democrat Willie L. Brown, Jr., and 40 votes for Republican James L. Brulte) brought the business of the house to a virtual standstill.²⁵ Since no Speaker could be elected that day, the house adjourned until the following day. On December 6, 1994 senior Member Willie L. Brown, Jr. presided over session, but had to recess the house for lack of a quorum.²⁶ The Republican Members had refused to attend session, objecting to Assembly Member Brown presiding.²⁷

On January 23, 1995, the Assembly finally resolved the crisis. The senior Member, Willie L. Brown, Jr., was presiding and allowed Members to vote on Mr. Mountjoy's qualifications. On a 40 to 39 vote, the Assembly disqualified Assembly Member Mountjoy from serving as a Member of the Assembly (he was not allowed to cast a vote on the motion). Subsequently, on a 40 to 39 vote, the Assembly elected Willie L. Brown, Jr. as Speaker.²⁸

In the 12 months that followed Speaker Brown's election, Republicans Doris Allen, Brian Setencich, and Curt Pringle were elected, respectively, as Speaker. Also, three recall elections were initiated against Assembly Members Paul Horcher, Doris Allen, and Mike Machado as a direct result of the Speakership fights of 1995. Assembly Members Horcher and Allen were recalled, while Assembly Member Machado's recall election failed.

Election of Senate Officers

The Constitution provides that the Lieutenant Governor shall be President and presiding officer of the Senate, therefore no election is required for that position.²⁹ The Senators do, however, elect a President pro Tempore from their membership to preside in the absence or disability of the Lieutenant Governor, and the Vice Chairperson of the Committee on Rules shall assume the duties and powers of the President pro Tempore in his or her absence.³⁰

²⁴ *Government Code*, Section 9023.

²⁵ *Assembly Journal*, 1995–96 Regular Session, p. 11, December 5, 1994.

²⁶ *Assembly Journal*, 1995–96 Regular Session, p. 23, December 6, 1994.

²⁷ The Chief Clerk issued a statement on January 4, 1996, stating that the intent of Government Code Section 9023 is that "the Chief Clerk's role as presiding officer is limited to the day (December 5) and the hour (12 noon) as set forth in the Constitution . . . the selection of a Speaker is a matter to be determined by the Members (elected by the voters) in the course of governing its internal affairs . . . [therefore] the senior member present presides on January 4." *Assembly Journal*, 1995–96 Regular Session, p. 48–49.

²⁸ *Assembly Journal*, 1995–96 Regular Session, p. 133–137, January 23, 1995.

²⁹ *Constitution*, Article V, Section 9.

³⁰ *Senate Rule* 7.

Members of the Committee on Rules, a Secretary and a Sergeant at Arms are also elected.³¹ The Senate officers, upon their election, also take the constitutional oath of office. The Assistant Secretary, a Minute Clerk, and a Chaplain are appointed by the Senate Rules Committee.³²

The Lieutenant Governor, even though he or she is the President of the Senate, does not have the right to introduce or debate a bill, nor can he or she vote upon a measure except when there is a tie vote in the Senate, at which time he or she may cast the deciding vote. When 21 votes are necessary to pass a bill,³³ the Lieutenant Governor would have a casting vote if the tie vote were 20 to 20, but he or she would not have a casting vote if the vote were 19 to 19, since his or her vote would not decide the question.³⁴ The Senator who has been elected President pro Tempore does not possess the tie-breaking vote capability, but retains all of his or her rights as a Senator.

Inauguration of Governor and Lieutenant Governor

The members formerly had the opportunity of watching the Speaker of the Assembly open the sealed election returns for Governor and Lieutenant Governor,³⁵ and then observing these newly elected officers take their oaths of office before the Legislature meeting in Joint Convention.³⁶ This was an impressive ceremony, but consumed a great amount of time, so the people, in 1940, amended the Constitution permitting the Legislature to regulate by law the manner of making election returns for Governor and Lieutenant Governor.³⁷ This provision was subsequently repealed as being unnecessary.³⁸

The law now provides that when the Secretary of State has compared and estimated the vote cast, a certificate of election shall be made out and delivered, or transmitted by mail, to each person elected.³⁹

In 1943, the law requiring that the Governor and the Lieutenant Governor take the official oath in the presence of both houses of the Legislature was repealed and a new law enacted which provided that each may take his or her oath at any time before taking office after receipt of his or her certificate of election and before any officer authorized to administer oaths.⁴⁰

The Rules of the Legislature

The organization of the Legislature is completed with the adoption of Standing Rules which regulate the procedure of each house, and Joint Rules which govern procedure between the two houses.

³¹ *Government Code*, Section 9170; *Senate Rule 10.5*.

³² *Senate Rule 10.5*.

³³ See *Senate Rule 47* for actions which require 21 votes in the Senate; also for actions which require a greater or lesser number of votes.

³⁴ *Constitution*, Article V, Section 9; *Mason's Manual of Legislative Procedure* Section 513(2).

³⁵ *Constitution*, Article V, Section 4 (repealed, November 5, 1940).

³⁶ *Political Code*, Section 905 (enacted 1872; repealed 1943).

³⁷ *Constitution*, Article V, Section 4.5 (enacted November 5, 1940; amended and renumbered Section 4, November 8, 1960; repealed, November 8, 1966).

³⁸ *Ballot Proposition 1-a, Assembly Constitutional Amendment No. 13*, 1966 First Extraordinary Session. See *Proposed Revision of the California Constitution*, February 1966, California Constitution Revision Commission, p. 74.

³⁹ *Elections Code*, Section 15504.

⁴⁰ *Government Code*, Sections 1360 and 1362.

The Constitution provides that each house shall adopt rules for its proceedings, and may, with the concurrence of two-thirds of all the Members elected, expel a Member.⁴¹

In essence, the Senate and Assembly Rules (the Standing Rules) prescribe the procedure of the houses as they relate to bills, amendments, committees, printing, expenses, parliamentary procedure, duties of the officers, and Members' decorum and privileges.

Order of Business

Each house, by rule, provides and arranges its own order of business in such a manner that the routine work of the body is disposed of before debatable issues are considered.

The following orders of business have been adopted by the individual houses:

*Senate*⁴²

1. Roll Call
2. Prayer by the Chaplain
3. Pledge of Allegiance
4. Privileges of the Floor
5. Communications and Petitions
6. Messages From the Governor
7. Messages From the Assembly
8. Reports of Committees
9. Motions, Resolutions, and Notices
10. Introduction and First Reading of Bills
11. Consideration of Daily File
 - (a) Second Reading
 - (b) Special Orders
 - (c) Unfinished Business
 - (d) Third Reading
12. Announcement of Committee Meetings
13. Leaves of Absence
14. Adjournment

*Assembly*⁴³

1. Roll Call
2. Prayer by the Chaplain
3. Reading of the Previous Day's Journal
4. Presentations of Petitions
5. Introduction and Reference of Bills
6. Reports of Committees
7. Messages From the Governor
8. Messages From the Senate
9. Motions and Resolutions
10. Business on the Daily File
11. Announcements
12. Adjournment

Pledge of Allegiance to the Flag

Though not specifically listed in the order of business for the Assembly, the Rules of the Assembly provide that at each session, following the prayer by the Chaplain, the Members of the Assembly and its officers and employees shall pledge allegiance to the Flag of the United States of America.⁴⁴ The rule also directs the Speaker to invite guests present in the Assembly Chamber to join in the pledge.

⁴¹ *Constitution*, Article IV, Sections 5 and 7. The Legislature has exclusive constitutional powers over its own internal affairs. Proposition 24, passed by voters in 1984, sought to impose numerous legislative rules changes and reforms. The law was invalidated by courts on the grounds that it was drafted as a statute instead of a constitutional amendment. *Peoples Advocate v. Superior Court*, 181 Cal. App. 3d 316.

⁴² *Senate Rule 4*.

⁴³ *Assembly Rule 40*.

⁴⁴ *Assembly Rule 41*. This ceremony was first made a part of the Assembly Standing Rules on January 25, 1941, when House Resolution No. 39, offered by Assemblyman Thomas J. Doyle on January 17, 1941, was unanimously adopted by the Assembly. *Journal of the Assembly for the Fifty-fourth Session, 1941*, Volume 1, pp. 270, 574, 575. As a matter of practice the pledge of allegiance is recited at the beginning of each day's session in the Assembly.

